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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,668	05/21/2004	Boris A. Movchan	13DV-14039-3	3667

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HARTMAN AND HARTMAN, P.C.
552 EAST 700 NORTH
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EXAMINER

BUEKER, RICHARD R

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/709,668

Applicant(s)

MOVCHAN ET AL.

Examiner

Richard Bueker

Art Unit

1763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Richard Bueker
Richard Bueker
Primary Examiner
Art Unit: 1763

Continuation of 3. NOTE: The proposed amendment raises new issues with respect to claim 3, which would not further limit proposed amended claim 1 (see 37 CFR 1.75c), and with respect to claims 4, 5 and 6, which would be substantial duplicates (see MPEP 706.03(k)).

Continuation of 11. does NOT place the application in condition for allowance because: Claim 20 requires that a means for removing (such as a shutter actuator 43 of Venkatesan) be operable to move a preventing means (such as shutter 46 of Venkatesan) between the evaporation source and the component to be coated. Venkatesan teaches that his shutter actuator is operable to position the shutter in the required position. Claim 20 also places certain time requirements with respect to when the shutter actuator is operable. First, claim 20 requires that the removing means be so operable "following the subsequent phase", as "the subsequent phase" is defined in claim 1. It is noted, however, that Venkatesan teaches (col. 7, lines 55-62) that the shutter is repositioned between the evaporation source and the component to be coated "at regular intervals during the coating process", and thus, the shutter actuator 43 is clearly operable to be positioned as required by claim 20 "following the subsequent phase". Claim 20 also requires the shutter to be positioned between the evaporation source and the component "during a second subsequent phase in which a remaining portion of the evaporation source is relatively rich in the remaining oxide compounds". It is noted, however, that Venkatesan teaches (see the paragraph bridging cols. 1 and 2; col. 4, lines 54-58; and col. 5, lines 7-24, for example) that his evaporation process does include the creation of non-stoichiometric vapor outside the "stoichiometric lobe", which inherently requires that the remaining target is relatively rich in at least some component, at any time after the commencement of the evaporation process. Therefore, the step of repositioning the shutter 43 "at regular intervals during the coating process" taught by Venkatesan inherently includes a time period or "second subsequent phase in which a remaining portion of the evaporation source is relatively rich in the remaining oxide compounds".

Regarding the apparatus of Demaray and Beesley, and further regarding Venkatesan, it at least would have been obvious to one skilled in the art to provide the shutter in all of these apparatus in a manner operable for positioning between the evaporation source and component at the conclusion of the process of coating the component, either manually or automatically. Such an arrangement would require the shutter to be inherently capable of operating as required by claim 20.